

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1885**

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**Introduced by Assembly Member Bigelow**

February 19, 2014

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An act to *add Sections 55.4 and 55.41 to the Civil Code, and to amend Section 4452 of the Government Code, relating to ~~public buildings: special access.~~*

LEGISLATIVE COUNSEL'S DIGEST

AB 1885, as amended, Bigelow. ~~Public buildings: Special access: disabled persons: persons: liability.~~

*Under existing law, a person, firm, or corporation that interferes with the access rights of a disabled individual is liable for the actual damages of each offense and any amount determined by a judge or jury of up to 3 times the amount of the actual damages, but in no case less than \$1,000. Existing law requires the State Architect to develop and submit for approval and adoption building standards for making buildings, structures, sidewalks, curbs, and related facilities accessible to, and usable by, persons with disabilities, as specified.*

*This bill would establish notice requirements for an alleged aggrieved party to follow before bringing an action against a business for an alleged violation of the above-described provisions. The bill would require that party to provide specified notice to the owner of the property, agent, or other responsible party where the alleged violation occurred. The bill would require that owner, agent, or other responsible party to respond within 30 days with a description of the improvements to be made or with a rebuttal to the allegations, as specified. If that owner, agent, or other responsible party elects to fix the alleged*

violation, the bill would provide 90 days to do so. The bill would provide that its provisions do not apply to claims for recovery of special damages for an injury in fact, and would authorize the court to consider previous or pending actual damage awards received or prayed for by the alleged aggrieved party for the same or similar injury. The bill would further state the intent of the Legislature to institute certain educational programs related to special access laws.

~~Existing law declares the intent of the Legislature that state building standards relating to access to public buildings by the physically handicapped and other specified regulations adopted by the State Architect be used as minimum requirements of accessibility and functionality for the physically handicapped, without loss of function, space, or facility for the general public.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. The Legislature finds and declares all of the*
- 2     *following:*
- 3     *(a) The federal Americans with Disabilities Act of 1990 (Public*
- 4     *Law 101-336) and this state's complementary special access laws*
- 5     *set forth in Sections 51, 52, 54, 54.1, and 54.3 of the Civil Code*
- 6     *and Sections 4450 and 4452 of the Government Code are intended*
- 7     *to protect Californians with special needs from unlawful and unfair*
- 8     *restrictions on access to the full and free use of the streets,*
- 9     *highways, sidewalks, walkways, public buildings, medical facilities,*
- 10    *including hospitals, clinics, and physicians' offices, public*
- 11    *facilities, and other public places.*
- 12    *(b) These special access laws are susceptible to abuse through*
- 13    *vexatious litigation that is not pursued with the primary intent of*
- 14    *rectifying a wrong or advancing or creating a public benefit.*
- 15    *(c) Vexatious special access lawsuits unduly burden our courts*
- 16    *and taxpayers and do not result in improved access for those with*
- 17    *special access needs. Those lawsuits cost California jobs and*
- 18    *economic prosperity, unfairly threaten small businesses, force*
- 19    *businesses to respond with higher costs for goods and services,*

1 and have adverse impacts on levels of employment and employee  
2 compensation.

3 (d) It is the intent of the Legislature in enacting this act to  
4 eliminate vexatious special access lawsuits while protecting the  
5 right of individuals to retain counsel and file an action for relief  
6 pursuant to the federal Americans with Disabilities Act of 1990  
7 (Public Law 101-336) and Sections 51, 52, 54, 54.1, and 54.3 of  
8 the Civil Code and Sections 4450 and 4452 of the Government  
9 Code.

10 (e) It is the intent of the Legislature in enacting this act to  
11 restrict the filing of special access lawsuits under California law  
12 without first notifying and allowing property owners, agents, or  
13 other responsible parties the opportunity to improve access by  
14 curing any violations.

15 (f) It is not the intent of the Legislature in enacting this act to  
16 prohibit the filing of special access lawsuits where, because of an  
17 alleged violation of this state's special access laws, an individual  
18 has suffered an injury in fact for which a proceeding in a court of  
19 competent jurisdiction is proper.

20 SEC. 2. Section 55.4 is added to the Civil Code, to read:

21 55.4. (a) Notwithstanding any other provision of law, prior to  
22 filing a claim under Section 51, 52, 54, 54.1, or 54.3 of this code,  
23 or Section 4450 or 4452 of the Government Code, the alleged  
24 aggrieved party shall notify the owner of the property, agent, or  
25 other responsible party where the alleged violation occurred by  
26 personal service, in accordance with applicable state or federal  
27 laws, or certified mail, of all alleged special access violations for  
28 which a claim may be filed by the alleged aggrieved party. That  
29 notice shall contain the following language:

30 "This letter is to inform you that the property located at (address  
31 of property), for which you are the property owner, agent, or other  
32 responsible party, may be in violation of federal and/or state  
33 special access laws pursuant to (expressly cite the federal and/or  
34 California statute of which the property is believed to be in  
35 violation) and caused harm to (list the name of the alleged  
36 aggrieved party).

37 Specifically, the possible violation(s) has/have been identified  
38 as follows: (Notice must identify the specific facts that constitute  
39 the alleged violation, including the date on which the alleged  
40 violation occurred and identification of the location of the alleged

1 violation with sufficient detail, so that the location can be identified  
2 by the property owner, agent, or other responsible party).

3 Under Section 55.4 of the California Civil Code, you have 30  
4 days to respond to this notice by certified mail or personal service.  
5 Your response must be addressed to (give address where personal  
6 service may be received or certified mail may be sent). California  
7 law allows you to respond in one of three ways:

8 (1) You may expressly state that improvements will be made to  
9 bring the premises into compliance with applicable special access  
10 laws. If you respond in this fashion, you have a maximum of 90  
11 days to make these improvements or repairs. The 90-day period  
12 shall begin on the date your response to this notice is received at  
13 the address given above. If the improvements or repairs necessary  
14 to bring the property into compliance with federal and state special  
15 access laws are not completed in 90 days, a lawsuit may be brought  
16 against you.

17 (2) You may challenge the validity of the alleged violations. If  
18 you respond in this fashion, a lawsuit may be brought against you  
19 immediately.

20 (3) If the violations listed above are the same or similar to  
21 previous violations that you believe have been corrected, you may  
22 respond by stating that the necessary repairs have been made to  
23 bring the property into compliance with federal and state special  
24 access laws. You must also attach evidence that verifies those  
25 improvements.

26 If you have any questions about this notice or your rights under  
27 federal or California law, please contact your legal counsel.”

28 (b) Beginning with the date of notice, the property owner, agent,  
29 or other responsible party where the alleged violation occurred  
30 shall have 30 days to respond by certified mail or personal service  
31 to the alleged aggrieved party. That response shall communicate  
32 any of the following:

33 (1) Expressly state that improvements will be made to bring the  
34 premises into compliance with applicable laws. A response in this  
35 fashion by the property owner, agent, or other responsible party  
36 where the alleged violation occurred shall not be considered an  
37 admission of guilt and is inadmissible in any future claims based  
38 on the same facts filed against the property owner, agent, or other  
39 responsible party.

1     (2) *Challenge the validity of the alleged violation. If the property*  
2 *owner, agent, or other responsible party where the alleged*  
3 *violation occurred so responds, the alleged aggrieved party may*  
4 *file a claim, subject to any applicable statutes of limitations, any*  
5 *time after receipt of notice as prescribed in this section.*

6     (3) *State that the alleged violations identified by the alleged*  
7 *aggrieved party have been corrected to comply with applicable*  
8 *state and federal special access laws. The property owner, agent,*  
9 *or other responsible party where the alleged violation occurred*  
10 *shall also attach evidence that verifies those improvements.*

11     (c) *If the property owner, agent, or responsible party where the*  
12 *alleged violation occurred responds in the manner described in*  
13 *paragraph (1) of subdivision (b), the property owner, agent, or*  
14 *responsible party where the alleged violation occurred shall have*  
15 *90 days to remedy the alleged violation. The 90-day period shall*  
16 *begin on the date the alleged aggrieved party receives a response,*  
17 *pursuant to subdivision (b), from the owner, agent, or responsible*  
18 *party where the alleged violation occurred.*

19     (d) *If, at the end of the 90-day period, the property owner, agent,*  
20 *or responsible party where the alleged violation occurred has not*  
21 *made the improvements described in paragraph (1) of subdivision*  
22 *(b) and fails to provide satisfactory explanation as to why those*  
23 *repairs were not yet completed, the alleged aggrieved party may*  
24 *file a claim.*

25     (e) *If the property owner, agent, or other responsible party*  
26 *where the alleged violation occurred has made the improvements*  
27 *described in paragraph (1) of subdivision (b), no current or future*  
28 *alleged aggrieved party shall receive any damages or attorney's*  
29 *fees, other than special damages, for any claim arising out of the*  
30 *same or similar facts that served as a basis for the alleged*  
31 *violation.*

32     (f) *This section applies to all claims for damages or fees, other*  
33 *than those praying for special damages arising out of injuries in*  
34 *fact. This section shall not be construed to limit claims for recovery*  
35 *of special damages filed by any person who suffers an injury in*  
36 *fact because they were denied full and equal access to an*  
37 *accommodation as required by Section 51, 52, 54, 54.1, or 54.3*  
38 *of this code, or Section 4450 or 4452 of the Government Code.*

39     (g) *In making a determination of the amount of damages*  
40 *awarded to a successful plaintiff, a court or jury shall consider*

1 *previous or pending actual damage awards received or prayed*  
2 *for by that plaintiff for the same or similar injury.*

3 *SEC. 3. Section 55.41 is added to the Civil Code, to read:*

4 *55.41. It is the intent of the Legislature to institute programs*  
5 *to educate business property owners and local municipalities about*  
6 *the accessibility requirements of federal and state special access*  
7 *laws.*

8 **SECTION 1.**

9 *SEC. 4. Section 4452 of the Government Code is amended to*  
10 *read:*

11 *4452. (a) It is the intent of the Legislature that the building*  
12 *standards published in the State Building Standards Code relating*  
13 *to access by physically handicapped persons and the other*  
14 *regulations adopted by the State Architect pursuant to Section*  
15 *4450 shall be used as minimum requirements to ensure that*  
16 *buildings, structures, and related facilities covered by this chapter*  
17 *are accessible to, and functional for, physically handicapped*  
18 *persons to, through, and within their doors, without loss of function,*  
19 *space, or facility where the general public is concerned.*

20 ~~*Any*~~

21 *(b) Any unauthorized deviation from those regulations or*  
22 *building standards shall be rectified by full compliance within 90*  
23 *days after discovery of the deviation.*

24 *(c) Notwithstanding subdivision (b), prior to any action*  
25 *commenced for an alleged violation of Section 4450 or this section,*  
26 *the notice requirements specified in Section 55.4 of the Civil Code*  
27 *shall apply to the alleged aggrieved party.*